IN THE HIGH COURT OF JUDICATURE AT BOMBAY

CIVIL APPELLATE JURISDICTION

SECOND APPEAL NO.702 OF 2005

Shri Kondiba Ramchandra Dobhale .. Appellant

Versus

Shri Babasaheb Sambhaji Salunke .. Respondent

Mr.Amit Sale for appellant

CORAM : P.V.KAKADE, J.

DATE : 8TH AUGUST, 2005.

P.C.:

1. The appellant has preferred this appeal against the judgment and order passed by Addl. District Judge, Islampur dated 13.7.2004 dismissing the appeal and confirming the judgment and order passed by Civil Judge, Junior Division, Islampur dated 13.12.1994 decreeing the plaintiff’s suit for possession of the suit property.

2. I have heard the learned counsel for the

appellant. Perused the record.

3. The plaintiff had filed the suit for possession of the suit property and for consequential reliefs on the ground that the suit property belonged to him and the defendant was illegally holding the possession of the suit property. The suit was contested by the defendant on two grounds, firstly it was contended that he had purchased the suit property by sale deed dated 31.1.1978 executed by Manjula, who died in the year 1980, alternatively prayed that he was tenant in the suit property prior to 1978 and sought dismissal of the suit.

. The learned trial judge adjudicated the dispute on merits and came to the conclusion that the plaintiff had proved his title to the suit property and that the defendants were in illegal possession and vahiwat of the suit property and as such the suit came to be decreed. The appeal was carried to the District Court. The Addl. District Judge after hearing both the parties confirmed the findings recorded by the trial court and dismissed the appeal. Hence the present appeal.

4. At the outset, it may be noted that there is absolutely no substantial question of law involved in this appeal. The defendant No.1 came with the case that he is owner of the suit property by virtue of sale deed executed by Manjula in the year 1978. However, the evidence on record is sufficient to show that the suit property was given to Manjula for her limited purpose of maintenance by Civil Decree in the year 1916 and with conditions that she shall not sell, alienate and transfer the suit property to anybody, therefore, Manjula had no ownership title to transfer the suit property in favour of Defendant no.1 and therefore, it cannot be based his ownership claim on that ground. So far as issue of tenancy is concerned, there is no iota of evidence to show that the defendant no.1 was tenant in the suit property prior to 1978, therefore, the trial court was right in discarding the claim of tenancy for want of foundation in any manner.

5. Therefore, the concurrent findings recorded by both the courts below appear to be just, legal and proper and therefore, it would brook no interference. In the result the appeal stands dismissed. Consequently Civil Application No.1194 of 2005 also stands dismissed.